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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,459

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EXAMINER

BROWN, COURTNEY A

ART UNIT

PAPER NUMBER

1616

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,459	<b>Applicant(s)</b> IRISARRI NAVALPOTRO, DANIEL	
	<b>Examiner</b> COURTNEY BROWN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-27 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-27 and 30-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/20/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgement of Receipt/Status of Claims***

This Office Action is in response to the amendment filed October 1, 2008. Claims 18-27 and 30-34 are pending in the application. Claims 1-17 and 28-29 have been cancelled. Claims 19-27 and 30-32 have been amended. Claims 33 and 34 are newly added. Claims 18-27 and 30-34 are being examined for patentability.

Rejections not reiterated from the previous Office Action are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

### ***Information Disclosure Statement***

The Information Disclosure Statement (IDS) submitted on January 20, 2008 been considered by the examiner.

### ***Response to Arguments***

Applicant's arguments, filed October 1, 2008, with respect to the objection of the Information Disclosure Statement (IDS) filed on January 20, 2006 have been considered but are moot in view of Applicant's submission of English language abstracts of JP 9263473 and JP 5194067. The Examiner also agrees with Applicant's argument that a concise explanation of the relevance of the two Spanish language

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references (i.e. ES 2113820 and ES 2158751) has been disclosed on page 3, line 21 to page 4, line 2 of the instant specification. Therefore, the objection of the Information Disclosure Statement (IDS) filed on January 20, 2006 has been **withdrawn**.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The rejection of claims 18-27 and 30-34 under 35 U.S.C. 103(a) as being unpatentable over La Critique Beige (GB 1148307) in view of Matsumoto Yoshizo (JP 5194067) and further in view of Iritani et. al. (US 5,545,418) has been **maintained**.

### ***Applicant's Invention***

Applicant claims a product for agricultural application in the form of granules or pellets, characterized in that it comprises 4-95%, 4-50%, or 13%(w/w) of vinasses and/or sludge measured as a dry extract of vinasses and/or sludge and the remaining, that is, 96-5%, 96-50%, or 87 % is a solid support.

Applicant claims a procedure for producing the aforementioned product comprising a step of addition of the vinasses in solid or liquid form to a solid support for granulation or pelletisation. Said solid support is an organic substance such as cane bagasse or composted organic matter or an inorganic substance such as clay, silicates, nitrates, or sulphates.

Additionally, Applicant claims a method for application of the aforementioned product involving: 1.) mixing, with other products of agricultural use in the form of granules or pellets comprising at least 4% (w/w) of vinasses and/or sludge measured as

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a dry extract of vinasses and/or sludge, and an organic or inorganic solid support; and  
2.) applying, mechanically or manually, said mixture directly to the soil of the agricultural extension to be treated.

***Determination of the scope and the content of the prior art  
(MPEP 2141.01)***

La Critique Belge (hereinafter '307) teaches a granulated fertilizer based on Thomas slag containing as a binding agent sugar fermentation or alcohol distillation refuse from the production of sugars from molasses (column 1, lines 10-11 and 29-34, claim 18 and 24 of instant application). ('307) teaches that the refuse may be derived from beet-sugar or cane-sugar molasses (dry extract of vinasses of instant application). ('307) teaches that the Thomas slag may be admixed with other fertilizer materials containing nitrogen or phosphorous (column 2, lines 63-65, claims 18-22, 25, and 27 of instant application). ('307) teaches that the binding agent may contain a water soluble sulphate such as potassium sulphate in an amount between 12 and 18 % by weight on the total refuse (column 2, lines 66-76, claims 18, 19 and 27 of instant application). Additionally, ('307) teaches a process for preparing said granulated fertilizer (claims 11-17 of reference, claims 30-32 of instant application).

***Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)***

The difference between the invention of the instant application and that of ('307) is that the instant invention requires a procedure comprising the step of adding liquid vinasses to a solid support. For this reason, the teaching of Yoshizo is joined.

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Yoshizo teaches the use of shochu lees (the solid and liquid dregs produced from shochu distilled from barley, sweet potato or rice) waste material wherein it is made into a white-distilled-liquor waste fluid that is condensed, made into a paste, and mixed with a fertilizer and was made into a pellet via granulation ([0004], claim 23 of instant application).

Another difference between the invention of the instant application and that of ('307) is that the instant invention requires the use of cane bagasse or composted organic material as the solid support. For this reason, the teaching of Iritani et al. is joined. Iritani et al. teach that bagasse feed is preferably usable as an organic fertilizer (column 3, lines 4-12 and column 7, lines 44-50, claims 25 and 25 of instant application).

### ***Finding of prima facie obviousness***

#### ***Rationale and Motivation (MPEP 2142-2143)***

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of the cited references to arrive at an agricultural product comprising vinasses and an inorganic or organic support along with a procedure for producing and a method of applying said agricultural product. One would have been motivated to make this combination in order to receive the expected benefit of having an alternative method of producing the granulated agricultural product as taught by Yashizo and having an agricultural product that exhibits the ability to provide a nutrient supplement and humidity to the soil as taught by Iritani et al. (see

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column 7, lines 44-50). "It would be prima facie obvious to combine two procedures, each of which is taught by the prior art to be useful for the same purpose in order to form a resultant procedure that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art." In re Kerkhoven, 205 USPQ 1069 (C.C.P.A. 1980).

Although the aforementioned references do not teach the use of the specific weight (w/w) ratio ranges of vinasses and/or sludge and the solid support as in claims 20 and 21 of the instant application, absent a showing of unexpected results, it would be obvious to one of ordinary skill in the art to vary the concentration amounts depending on the desired result and plant species. Determining optimal concentrations of a composition's components is routine experimentation and is readily practiced by one of ordinary skill.

### ***Examiner's Response to Applicant's Remarks***

Applicant's arguments filed on October 1, 2008 have been fully considered but they are not persuasive. Applicant argues that the prior art is not analogous because La Critique Belge is not in the field of applicant's endeavor but in the field of Thomas slag-derived granulated fertilizer and that the Examiner's conclusion of obviousness is based on impermissible hindsight reasoning. However, the Examiner disagrees because, according the instant specification, the term "vinasses" refers to effluents produced in distilleries of any type and, specifically, effluents obtained in the process of fermenting sugar cane or beet and the term "sludge" refers to effluents obtained from



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cleaning the raw materials, cleaning the fermentation tanks and cleaning the tanks in which the vinasses are stored (see page 1, lines 10-20 of the instant specification). La Critique Belge teach a granulated fertilizer based on Thomas slag containing as sugar fermentation or alcohol distillation refuse from the production of sugars from beet-sugars or cane-sugar molasses (page 1, lines 27-33). Therefore, it is the Examiner's position that Thomas Slag, vinasses, and sludge are the same since they are both refuse produced as a result of the fermentation of sugars from beet or sugar cane.

In response to applicant's argument that La Critique Belge is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In the instant case, the granulated fertilizer taught by La Critique Belge is in the field of Applicant's endeavor wherein refuse or effluents resulting from fermenting sugar cane or beet is used to produce a fertilizer.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant also argues that the requirements for a prima facie case of obviousness are not met because the teachings of La Critique Beige (i.e. the '307 reference) does not mention or suggest the desirability of adding liquid residues to Thomas slag. However, the Examiner disagrees. Instant claim 22, is drawn to a procedure for producing granules comprising vinasses and/or sludge characterized in that said procedure comprises a step of the addition of the vinasses in solid or liquid form to a solid support for granulation or pelletisation. As discussed in the previous argument, it is the Examiner's position that Thomas Slag, vinasses, and sludge are the same since they are both refuse and effluents produced as a result of the fermentation of sugars from beet or sugar cane. Therefore, it is the Examiner's position that liquid residues are not added to Thomas Slag to produce granules or pellets because Thomas Slag is vinasses or sludge in solid form.

Finally, Applicant argues that the expectation of success is lacking from the modification of the teaching of La Critique Beige by the addition of liquid vinasses. Instant claim 22, is drawn to a procedure for producing granules comprising vinasses and/or sludge characterized in that said procedure comprises a step of addition of the vinasses in solid or liquid form to a solid support for granulation or pelletisation. As discussed in the previous arguments, it is the Examiner's position that Thomas Slag ,vinasses, and sludge are the same since they are both refuse and effluents produced as a result of the fermentation of sugars from beet or sugar cane. Therefore, it is the

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Examiner's position that liquid residues are not added to Thomas Slag to produce granules or pellets because Thomas Slag is vinasses or sludge in solid form.

The claims remain rejected.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public

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PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electron Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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